

1 Honorable Barbara J. Rothstein
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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15 TELEBUYER, LLC,

16 Plaintiff and
17 Counterdefendant,

18 v.

19 AMAZON.COM, INC., *et al.*,

20 Defendants and
21 Counterclaimants.

22 NO. 2:13-cv-01677-BJR
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25 **TELEBUYER'S OBJECTION TO
26 AMAZON'S SECOND TECHNICAL
ADVISOR CANDIDATE**

27 Telebuyer objects to the appointment of Professor James Kurose, proposed by
28 Amazon in response to the Court's November 5, 2014 Minute Entry, as a technical advisor
29 in this matter. *See* Dkt. No. 177.

30 As discussed during the November 5 teleconference with the Court, it is submitted
31 that there are three criteria that should be considered in evaluating candidates to serve as a
32 neutral technical advisor to the Court in this case: (1) neutrality, (2) technical qualifications
33 to understand the technology at issue (*e.g.*, a degree in electrical engineering or computer
34 science), and (3) prior experience serving as a court-appointed neutral technical advisor.

35 The *Markman* briefing in this case is not limited to the typical claim construction
36 arguments. Rather, the briefing raises a number of complex legal questions concerning

1 claim construction and invalidity, with underlying issues of fact. The third criteria—prior
 2 experience as a technical advisor—is, therefore, particularly significant in this case.
 3 Telebuyer submits that the Court would benefit from the advice of a technical advisor also
 4 having an understanding of the legal framework in which these invalidity and claim
 5 construction questions are posed.

6 Unlike Telebuyer, which has proposed two candidates (Dr. A.J. Nichols and Mr.
 7 Richard Egan) that, in addition to having degrees in electrical engineering, also have
 8 extensive experience serving as technical advisors in countless patent infringement cases
 9 across the country, Amazon’s second candidate, James Kurose, lacks any similar
 10 qualifications. Dr. Kurose appears to have never served as a neutral technical advisor to
 11 any court in any patent case. Accordingly, Telebuyer submits that Dr. Kurose would not be
 12 well-suited to assist the Court in addressing the complex issues presented in this case. In
 13 contrast, Amazon has at least twice consented to and jointly proposed Telebuyer’s
 14 candidate, Richard Egan, as a neutral technical advisor in prior patent litigations to which
 15 Amazon was a party.¹

16 Telebuyer additionally has concerns regarding prior relationships that may exist
 17 between Amazon (or its counsel) and its second candidate, Dr. Kurose. Telebuyer has
 18 represented to the Court that it has no prior relationship or connection with either of its two
 19 candidates. Amazon, on the other hand, has not made a similar representation as to either
 20 of its candidates. Instead, Amazon represents only that it did not contact Dr. Kurose to
 21 determine his availability, but has not disclosed whether it has any current or prior
 22 relationship with Dr. Kurose or his research group.

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 25 ¹ See, e.g., *PersonalWeb Technologies, LLC et al. v. Amazon.com, Inc. et al.*, 6:11-cv-00658, Dkt. No. 121
 26 (E.D. Tex. May 8, 2013); *Bedrock Computer Technologies LLC v. Softlayer Technologies, Inc., et al.*, 6:09-
 cv-0269, Dkt. No. 257 (E.D. Tex. Aug. 2, 2010).

1 DATED: November 7, 2014.
2

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: November 7, 2014 at Seattle, Washington.

s/Kelly M. Kennedy

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